

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1431 of 1987

with

SPECIAL CIVIL APPLICATION NO. 1432 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KANJIBHAI A TANK

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR. A.J. DESAI, GOVERNMENT PLEADER for
Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 19/11/1999

ORAL JUDGEMENT

The only short question, rising on the surface of the petition, under Art. 227 of the Constitution of India, is whether, the plea, if not mercy, but of bonafide mistake challenging impugned directions, passed, on facts, and found by 3 authorities concoruntly, on facts against the petitioner, could become a ground for

assailing the order of removal of unauthorised construction and on a public plot ? and again upon infrection of one of the terms and conditions of the Government order for conversion of agriculture land in to a Non-Agriculture land, under Sec. 65 of Bombay Land Revenue Code or not ? to which, positive and spontaneous answer would be in the negative.

In order to examine the aforesaid question, as such, no further minute details could be necessary. However, material leading to the rise of a petition under Art. 227 may be stated that the original owner of the piece of land, one Ramji was granted permission through his power of attorney holder Bhagwanji in respect of agriculture land bearing survey No. 307 a part of 307/2 admeasuring 2 Acres and 38 Gunthas, land situated in Upleta village, in the District of Rajkot, came to be granted, on 28.7.80, by the Competent Authority subject to certain terms and condition, exercising the powers under Sec. 65 of the Code, came to be transferred by registered sale deed to one Kanji who is petitioner before this Court, was served with the Show Cause Notice dated 18.2.1987, under Sec. 202 of the Court, for the removal of unauthorised contruction, in a case No.3/99, by the Revenue Authority, copy is produced at annexure "J" culminated into the impugned original order confirmed by the Collector and the Secretary, Department of Revenue (Appeal) State of Gujarat, is, now, assailed in this petition, under Art. 227, unsuccessful, petition, before, 3 authorities, raised a plea of bonafide mistake in raising construction in the adjoining reserve plot. The findings of facts, concurrently held by all the authorities, and the Revenue Department in appeal in Revenue, is now sought to be questioned in the petition under Art. 227 wherein, the jurisdictional subject and sweep is very much circumscribed. It is a settled proposition of law that power of this Court under Art. 227 of the Constitution of India is limited and empowering the Court for superintending power over the Authorities by the High Court, cannot be permitted to be invoked by a person, in respect of findings of facts, which is concurently, held against him and also by a person who has committed or violated terms and conditions of a grant of land or a permission under Sec. 65 of the Code, there is no jurisdictional issue is involved. The only plea which is adjudicated before this Court in this petition, is undoubtedly, based on the facts which are concurrently against the petitioner for the elaborate reason as suggested in the impugne orer. The powers of superintendence by the High Court, therefore, cannot be permitted to be involved by a person who has committed

not only default of the terms and conditions of the order under Sec. 65 of the Code, but who has made undue advantage and wrong gain, upon in-equitable way, therefore, after having given thought to the facts and circumstances, person can, proposition of law and tenure of the impugned order and the Constitutional mandate enshrined under Art. 227, this petition on hand, deserves to be thrown over board, accordingly, it is rejected.

The additional contentions advanced in Spl.C.A. No.1432/87, is that the proceedings before the review authority have been held against the present petitioner and not against his wife, who is really owner of said plot of land of the subjected constructed thereof. Such a plea was raised before the authority and it is also based on findings of the facts. This plea is also not accepted based on facts by the authority.

The ad-interim relief shall obviously stand revoked and it will be open for the authority to pursue the appropriate permissible legal redressal for the removal of the unauthorised construction made on the reserve plot. Petitions, accordingly, shall stand dismissed.

Rule discharged.

At this stage, Ld. advocate Mr. Niraj, appearing for Ld. Advocate Mr. Thakkar, submitted that the Respondent Authority may be restrained from implementing the order for further period of 3 to 4 months so as to enable the petitioner to make representation before the authority concerned.

In light of the factual scenario, observed by this Court, and observed on the record of the case and noted partly hereinbefore, in this order is required to be rejected, and accordingly, rejected.

sanjay.